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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SHOLEH DAVARI TEHRANI CLAYTON,

Plaintiff and Appellant,

v.

COUNTY OF ORANGE et al.,

Defendants and Respondents.

G052156

(Super. Ct. No. 30-2014-00698226)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig L. Griffin, Judge. Affirmed.

Sholeh Davari Tehrani Clayton, in pro. per., for Plaintiff and Appellant.

Koeller, Nebeker, Carlson & Haluck and Zachary M. Schwartz for Defendants and Respondents.

* * *

INTRODUCTION

Sholeh Davari Tehrani Clayton sued the County of Orange and certain of its employees (defendants) for violating her civil rights. The trial court granted defendants' motion for summary judgment. Clayton appeals from the ensuing judgment.

Defendants offered admissible evidence showing that Clayton could not establish one or more of the elements of her cause of action. Clayton failed to offer any admissible evidence of a triable issue of material fact. We therefore affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Clayton was charged with stalking (Pen. Code, § 646.9, subd. (a)) in Los Angeles County Superior Court. In August 2011, she pled nolo contendere, and was sentenced to five years' formal probation.

On the morning of December 6, 2012, Clayton failed to appear at a noticed probation hearing, and the Los Angeles County Superior Court issued a no-bail bench warrant for her arrest. At about 1:20 p.m. that same day, Orange County Sheriff's Deputy Chad Davis observed Clayton's son, Max, and Max's friend, Oscar, smoking marijuana in Clayton's Dodge van in a McDonald's parking lot in Laguna Niguel.

After Davis detained Max and Oscar, Clayton arrived at the scene carrying groceries. Davis confirmed with Clayton that she was on formal probation and performed a probation search of her purse, but found nothing illegal. Another sheriff's deputy ran Clayton's name through a computer program used by the Orange County Sheriff's Department. The program revealed the bench warrant from Los Angeles County Superior Court, and Davis placed Clayton under arrest. Max also had a warrant for his arrest, and he was also arrested. (There is no issue in this case with respect to Max's arrest warrant.) Davis confirmed the existence of the warrant for Clayton's arrest by contacting dispatch, which confirmed it with Los Angeles County; Davis then transported Clayton and her son to jail.

After arresting Clayton and Max, only Oscar was present to take custody of the van. Oscar advised Davis he did not have a driver's license. Pursuant to Vehicle Code section 22651, subdivision (h), Dunivin's Towing Service (Dunivin's) was contacted, and towed Clayton's van to its storage yard. While transporting Clayton and Max to jail, Davis informed them who towed the van and where it would be stored.

Davis did not remove any property from Clayton's van. Davis collected Clayton's personal effects at the time of her arrest and turned them into the Intake Release Center to be inventoried upon Clayton's booking into jail. Davis had no other involvement with the inventory or disposition of any of Clayton's property. Clayton signed verifications confirming her personal property inventoried upon being booked into jail, and her receipt of the property when she was released.

Clayton contends that her property in the van was lost or sold after the van was impounded by Dunivin's. On February 5, 2013, Clayton went to Dunivin's storage yard and signed a verification that she was there to remove her personal property from the van. Clayton contends she never recovered any property from the van. Dunivin's executed a lien sale of Clayton's van in accordance with Civil Code section 3072, and the van was sold at auction in late February 2013.

Clayton filed a complaint alleging a single cause of action for violation of civil rights under section 1983 of title 42 of the United States Code (section 1983).[1] Defendants filed a motion for summary judgment in November 2014. The trial court granted the motion. Clayton filed a notice of appeal on June 22, 2015. The trial court signed an order granting summary judgment and the judgment the following day.[2]

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[1] Defendants' demurrer to Clayton's other causes of action was sustained with leave to amend. Clayton never amended those causes of action, however.

[2] Clayton's notice of appeal is valid, although it was filed before entry of the judgment, because it was filed after the court's minute order containing the rendition of judgment. (*In re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900, 906.)

DISCUSSION[3]

We review orders granting summary judgment de novo. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767; *Nava v. Saddleback Memorial Medical Center* (2016) 4 Cal.App.5th 285, 289.) A motion for summary judgment is properly granted if the moving papers establish there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "'The moving party bears the burden of showing the court that the plaintiff "has not established, and cannot reasonably expect to establish, a prima facie case . . . ." [Citation.]' [Citation.] '[O]nce a moving defendant has "shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established," the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff "may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . ."

[3] Clayton's opening brief on appeal is, to put it mildly, difficult to read and understand. She appears to raise a number of issues that are not before us on appeal, including: (1) her original attorney's failure to file a proper complaint; (2) the court ruled on the summary judgment motion while Clayton was unavailable due to her incarceration (this contention is false; the court continued the hearing when Clayton was incarcerated, and Clayton was present in court representing herself when the motion was heard and taken under submission); (3) the trial court erred in granting a motion for leave by the county to file a cross-complaint against Dunivin's; (4) Dunivin's motion to compel discovery from Clayton was defective; (5) her original attorney failed to amend the complaint after the demurrer to most causes of action was sustained with leave to amend (again, this contention is wrong, as the substitution of attorney substituting Clayton, in pro. per., for her retained counsel was filed *before* the demurrer was filed, much less ruled on); (6) the trial court erred in granting summary judgment on a superseded complaint; (7) Clayton's retained counsel was ineffective in failing to "recognize . . . material factual issue[s]," despite the fact counsel was not representing Clayton at the time the motion for summary judgment was filed; (8) "the court erred by filing wrong documents that were incomplete an[d] in error of the correct dates when signed by judge an[d] information that was incomplete"; and (9) the trial court failed to consider Clayton's motions (which are not specified in her brief).

[Citations.]' [Citation.]" (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 274.) We "'"liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party."'" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1039.)

Clayton alleged that her federal civil rights were violated when she was arrested, and her vehicle impounded. Her claim is based on section 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

Defendants met their burden of establishing Clayton could not prevail on one or more of the elements of her cause of action for violation of section 1983. Defendants offered admissible evidence that Clayton was lawfully arrested pursuant to a valid no-bail warrant issued by the Superior Court of Los Angeles County. Clayton failed to produce any admissible evidence supporting her claim that she had an agreement with the judge in Los Angeles County to appear later in the day for her probation hearing.

Defendants offered admissible evidence, through Davis's declaration and Clayton's discovery responses, that Clayton was not subject to any civil rights violations when she was arrested. The videotape of the arrest supports defendants' argument that no civil rights violations occurred. Clayton offered no admissible evidence to the contrary; indeed, Clayton did not file a declaration in opposition to the motion for summary judgment.

Defendants offered admissible evidence that they properly impounded Clayton's vehicle after arresting her and her son. "A peace officer . . . may remove a vehicle located within the territorial limits in which the officer or employee may act,

under the following circumstances: [¶] . . . [¶] (h)(1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody." (Veh. Code, § 22651, subd. (h)(1).) In *Halajian v. D & B Towing* (2012) 209 Cal.App.4th 1, the appellate court agreed that a towing company was not liable for impounding a vehicle, despite the fact it was legally parked in a store parking lot and was not impeding traffic: "In the role of 'community caretaker,' peace officers may impound vehicles that jeopardize public safety and the efficient movement of vehicular traffic. [Citation.] Factors relevant to whether a particular impoundment is justified include the location of the vehicle and the likelihood it will create a hazard to other drivers or be a target of vandalism or theft." (*Id.* at p. 15; see *South Dakota v. Opperman* (1976) 428 U.S. 364, 369; *Hallstrom v. City of Garden City* (9th Cir. 1993) 991 F.2d 1473, 1477, fn. 4.) Clayton and her son were both arrested, and the son's friend did not have a driver's license. Clayton's vehicle was in a restaurant parking lot; the manager of the restaurant requested that the vehicle be moved. Towing and impounding the vehicle prevented vandalism or theft. Clayton failed to offer any evidence establishing a triable issue of material fact.

Defendants offered admissible evidence that Clayton's personal items were not lost at the jail. Defendants offered a form signed by Clayton verifying that she received all of her property when she was released from jail. Clayton admitted in her deposition that she signed the form. Clayton's contention that she only signed the form because she was instructed to do so does not raise a triable issue of material fact.

Defendants offered admissible evidence that they had no involvement in the alleged loss of Clayton's personal property from her vehicle; Davis's declaration that he did not take anything from the vehicle (other than the evidence supporting Max's arrest) was supported by Max's deposition testimony that he did not see Davis take any items from the van. Clayton's own deposition testimony was that the impound company told

her they claimed possession of all the personal property in the van. Assuming that Clayton's property was lost from her vehicle, and that the towing company was responsible for that loss, and that the towing company was the agent of these defendants, vicarious liability does not apply to make these defendants liable. (*County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218, 233 [while defendants may be directly liable for subordinate officers' unlawful acts if those acts are carried out pursuant to regulations, policies, customs or usages, they may not be vicariously liable].)

Clayton argues that her arrest was invalid because, at the time the arrest occurred, no valid arrest warrant had been issued. Clayton relies on the warrant abstract submitted in support of defendants' motion for summary judgment. Clayton argues that the abstract appears to have a time stamp of 16:51, and therefore the warrant was not issued until 4:51 p.m. on December 6, 2012 and could not have been the basis for her arrest at about 1:20 p.m. Davis's declaration clearly explained that the warrant abstract "was used to book [Clayton] into jail," and that Davis relied on the bench warrant, as opposed to the warrant abstract, to arrest Clayton. Defendants offered admissible evidence establishing that Clayton's arrest was based on a valid arrest warrant; Clayton failed to offer admissible evidence creating a triable issue of material fact.

This court granted leave to Clayton to file a late reply brief on appeal. Without any argument, Clayton attached several screen shots from the dashboard camera videos of her arrest that purport to show the arresting officers placing a $100 bill under the laptop on the police cruiser. These photographs would not create a triable issue of material fact (even if they had been presented to the trial court in opposition to the motion for summary judgment) because the property inventory signed by Clayton reflects that $902 in cash was booked into inventory at the jail, and then received by Clayton on release.

Clayton also attached a photograph to the reply brief that appears to be her battered face. However, the videotapes of Clayton's arrest and transfer to the jail do not

show any physical abuse by any of the officers, and Clayton's interrogatory responses verified that she had not suffered any physical injuries. The photograph, even if it had been offered in opposition to the motion for summary judgment, would not create a triable issue of material fact.

DISPOSITION

The judgment is affirmed. Respondents to recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.